

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK**

SHARAGANO HOLDINGS, INC.,

Plaintiff,

v.

JMB APPAREL DESIGNER GROUP, INC.,

Defendant.

Civ. Action No. 07 Civ. 6244 (NRB)

**REPLY AFFIDAVIT OF ELI LOMITA IN FURTHER SUPPORT OF
PLAINTIFF'S APPLICATION FOR PRELIMINARY INJUNCTION**

I, Eli Lomita, being duly sworn, do hereby depose and state under oath as follows:

1. I am a Manager of Sharagano Holdings, Inc. ("Sharagano") and submit this reply affidavit in further support of Sharagano's application for a preliminary injunction.
2. Sharagano is the owner of the "SHARAGANO" trademark (the "Trademark"), a valid United States Trademark Registration No. 2727098, for the mark used in connection with wearing apparel.
3. Defendant JMB Apparel Designer Group, Inc. ("JMB") is a prior licensee of the "SHARAGANO" trademark (the "Trademark"). JMB's rights to use the Trademark terminated August 2006, and subsequent to that date, JMB has continued to use the Trademark.
4. On July 6, 2007, Sharagano moved this Court for an Order enjoining JMB from, among other things, using the SHARAGANO Trademark, including without limitation SHARAGANO ATELIER, or any confusingly similar thereto. Sharagano alleged in its application that JMB was continuing to sell women's clothing with the aforementioned label.

5. I understand that at the court appearance by counsel held on July 6, 2007, JMB's counsel argued that JMB had not sold any garments using this label and that the only garments still in the stores were being sold not by JMB, but by stores on remainder.

6. The Court directed counsel for JMB to address the following: (1) When was the last time that JMB sold any suit with the Sharagano label and hangtag?; (2) When was the last time that JMB sold suits with the Sharagano label and hangtag under its License Agreement to (a) Lord & Taylor's stores and (b) Filene's Basement stores?; (3) Show proof that JMB currently sells Atelier branded and labeled suits to (a) Nordstrom's and (b) Lord & Taylor's; (4) Identify the season and year of the suits advertised on the Internet as Sharagano Atelier (Plaintiff's Exhibits E & F); (5) Identify JMB's current labels and hangtags; and (6) Explain the hangtag that appears as Plaintiff's Exhibit D.

7. In its answering papers, JMB now admits and acknowledges that it is using a label and hangtag that appears to have "Sharagano" in script writing followed by the word "Atelier" ("SHARAGANO ATELIER"). (See Ben Choy Aff. ¶15(f), Exhibit 11). In fact, JMB admits that it is using these hangtags and labels on approximately 25% of its Spring 2007 line. (Ben Choy Aff. ¶15(f), Exh. 11). Based on this information, Mr. Choy has acknowledged that JMB manufactured and sold new products bearing these hangtags and labels subsequent to the termination of the license. (Ben Choy Aff. ¶15(f), Exh. 11).

8. Further, subsequent to our appearance, Sharagano and its counsel directed individuals to visit certain retailers in New York City, including Lord & Taylor, Filene's Basement and Burlington Coat Factory, to investigate whether JMB's suits bearing the SHARAGANO ATELIER hangtag were currently in those stores. Those individuals found that those stores were selling suits bearing the SHARAGANO ATELIER labels and hangtags. (The

Affidavits of Jackie Pappas (“Pappas Aff.”) and Chelsea Roseman (“Roseman Aff.”) are attached hereto as Exhibits 1 and 2). As set forth in the Pappas and Roseman Affidavits, and the exhibits attached thereto, those individuals purchased suits bearing the SHARAGANO ATELIER label manufactured by JMB. We are prepared to present these suits with the labels to the Court for its inspection.

9. The current public relations and marketing manager of Sharagano, Jackie Pappas, went to two retailers in New York City, including Filene’s Basement and Burlington Coat Factory, and inquired to sales personnel in each store whether the store carried “Sharagano” products. In each store, the sales associates directed Ms. Pappas to racks containing women’s suits with the SHARAGANO ATELIER label and indicated that these products were “Sharagano” suits. (Exhibit 1).

10. In response to the Court’s direction that JMB explain the “sh” script design used on the label and hangtag attached as Exhibit D to Sharagano’s Complaint, JMB states that the “sh” word was “intended to be illegible.” (Choy Aff. ¶15(f)). The only reason a former licensee would use an “illegible” script that appears to say “Sharagano” on its labels and hangtags would be for the purpose of obfuscating the SHARAGANO Trademark and confusing consumers and retailers into believing that the label reads “Sharagano Atelier” – there is no other plausible explanation.

11. In fact, by JMB’s own admission, the illegible word is not intended to represent a word that is completely independent of the well known SHARAGANO trademark. Consequently, it is evident that any retailer which previously purchased goods from JMB bearing the SHARAGANO Trademark would likely assume that the new design is merely a variation of the SHARAGANO Trademark.

12. JMB also states in its opposition papers that the last time it sold “Sharagano” labeled suits to Lord & Taylor’s stores was September 30, 2005 (Choy Aff. ¶15(b)). However, JMB failed to inform the Court that it currently offers for sale at Lord & Taylor’s (presumably its Spring 2007 line) suits with the SHARAGANO ATELIER label and hangtag. (See Exhibit 2 (Roseman Aff.)). Indeed, JMB failed to address the fact that its suits with the SHARAGANO ATELIER labels and hangtags are currently for sale in a number of other stores, including Filene’s Basement and Burlington Coat Factory. (See Exhibits 1, 2).

13. JMB’s claims that SHARAGANO is a “dead label” and that it is not currently in stores is wrong, disingenuous and vexatious. In fact, since August 2006, Sharagano and its current licensee have continued to sell products bearing the SHARAGANO Trademark to retailers throughout the United States, including Dillards, as an example.

WHEREFORE, I respectfully request that this Court issue a preliminary injunction described above, as well as such other further relief as may be just and proper.

Dated: New York, New York
July 19, 2007

SHARAGANO HOLDINGS, INC.

Eli Lomuta

Sworn to me this 19th
day of July, 2007

Meagan Zapotocky
Notary Public

Meagan Zapotocky
Notary Public State of New York
No. 02ZA6135583
Qualified in New York County
Commission expires 10 / 24 / 2009